

COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW WASHINGTON
WASHINGTON, DC 20004-2401 NEW YORK
TEL 202.662.6000 SAN FRANCISCO
FAX 202.662.6291 LONDON
WWW.COV.COM BRUSSELS

COPIES OF COPY ORIGINAL

FILED/ACCEPTED October 22, 2007

OCT 22 2007

Federal Communications Commission
Office of the Secretary

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

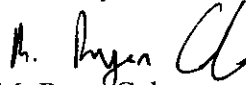
Re: **Docket No. 96-45, DA 07-36-27; ETC Petition of AT&T in Georgia; TDS
Telecommunications Corp. Protective Order**

Dear Ms. Dortch:

Enclosed please find two redacted copies of TDS Telecommunications Corp.'s Supplemental Opposition to AT&T's petition for designation as an ETC in Georgia. **The unredacted version of this Opposition contains Highly Confidential Information that is subject to the Commission's August 15, 2007 Protective Order entered in this proceeding and not for public view.**¹ TDS' designated representative, the undersigned counsel, submit this Opposition pursuant to the terms of the Protective Order.

Please contact the undersigned if you have further questions or need additional information.

Sincerely,


M. Ryan Calo
Counsel to TDS

Enclosures

¹ Protective Order, *Federal-State Joint Board on Universal Service, Petition of Cingular Wireless, LLC for Designation as an ETC in the State of Georgia*, CC Docket No. 96-45 (Aug. 15, 2007) (*TDS Protective Order*).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)
)
AT&T)
)
Petition for Designation as)
Eligible Telecommunications Carrier)
in the State of Georgia)

CC Docket No. 96-45

FILED/ACCEPTED

OCT 2 2 2007

Federal Communications Commission
Office of the Secretary

To: The Commission

SUPPLEMENTAL OPPOSITION OF TDS TELECOMMUNICATIONS

INTRODUCTION AND SUMMARY

This filing supplements TDS Telecommunications' (TDS) Opposition to Cingular Wireless, LLC's (now AT&T) Petition for Eligible Telecommunications Carrier (ETC) status in the State of Georgia.¹ In its original Opposition, TDS argued that based on the (little) available information, AT&T had failed to demonstrate that it would meet the minimum criteria for ETC designation set out by the Commission in its *ETC Designation Order*, and designating AT&T as an ETC in Georgia would not serve the public interest, as required by Section 214 of the Communications Act and Commission rules.² TDS separately sought access to AT&T's Service Improvement Plan (SIP), arguing that the information it contained was integral to TDS' ability to

¹ TDS operates in the State of Georgia through three companies: Blue Ridge Tel. Co., Camden Tel. Co. and Tel. Co. Inc., and Nelson-Ball Ground Tel. Co.

² Opposition of TDS Telecommunications Corp., CC Docket No. 96-45 (Feb. 20, 2007).

meaningfully comment on AT&T's petition.³ On August 15, 2007, the Commission entered a Protective Order in this proceeding, allowing TDS' designated representatives to review AT&T's SIP.⁴

Pursuant to the Protective Order, TDS' counsel reviewed three years of data (2007, 2009, and 2011) to ascertain compliance with the Commission's requirements.⁵ AT&T's SIP confirms that designating AT&T as an ETC would not serve the public interest because the USF monies would go not for [REDACTED] but rather the vast majority will go for nothing but [REDACTED]

[REDACTED] The USF program was not designed to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Among other things, the information contained in AT&T's SIP shows that:

[REDACTED]
[REDACTED]

³ See TDS Telecommunications Corp.'s Motion for Protective Order, Freedom of Information Act Request, and Request for Extension of Time, CC Docket No. 96-45 (Jan. 26, 2007).

⁴ Protective Order, Federal-State Joint Board on Universal Service, Cingular Wireless, LLC, Petition of Cingular Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the State of Georgia, CC Docket No. 96-45 (rel. Aug. 15, 2007) (*Protective Order*).

⁵ In the interest of efficiency, TDS' representatives did not review all years, [REDACTED]
[REDACTED]

[REDACTED]

These facts make clear that AT&T does not intend to use USF funding to further the goals of universal service, and that designating AT&T as an ETC in Georgia would not serve the public interest. Accordingly, TDS reiterates its request that the Commission deny AT&T's designation in Georgia, at least with respect to TDS study areas.

I. THE INFORMATION CONTAINED IN AT&T'S SIP DOES NOT SUPPORT AT&T'S PETITION BUT INSTEAD CONFIRMS THAT AT&T SHOULD NOT BE DESIGNATED AS AN ETC IN VIRGINIA

Section 214 requires that the Commission determine whether an ETC designation will serve the public interest.⁶ As the Commission has stated, "[t]he public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service."⁷ As with the Commission's other criteria, the burden falls squarely on the applicant to demonstrate that its designation will serve the public interest.⁸ In its Petition, AT&T claims that designating it as an ETC will serve the public interest because, as an ETC, AT&T "will use the support to build a number of new cell sites and other infrastructure . . . [and] will also use

⁶ 47 U.S.C. § 214.

⁷ *ETC Designation Order* at ¶40.

⁸ See Memorandum Order & Opinion, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia, CC Docket 96-45, 19 FCC Rcd 1563 (2004) (*Virginia Cellular Order*).

support for other projects for the facilities and services for which support is intended.”⁹ TDS argued in its Opposition that designating AT&T as an ETC in Georgia would instead deeply undermine the goals of universal service.¹⁰

[REDACTED]

[REDACTED] In addition to straining the USF and potentially triggering an avalanche of similar petitions,¹¹ granting AT&T’s petition in this specific instance [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A. AT&T Relied On Its SIP To Demonstrate That Its Designation Would Serve The Public Interest

As the Commission explained in the *ETC Designation Order*, the five-year SIP is the primary vehicle by which applicants “demonstrate that supported investments in service will be

⁹ Petition of AT&T at 14.

¹⁰ Opposition of TDS at 7.

¹¹ *Id.* at 7-8. See also Opposition of Verizon, Petition of Cingular Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket 96-45 (Dec. 4, 2006).

¹² See Exhibit A.

made throughout the service area.”¹³ In rejecting an even more rigorous and specific public interest standard, the Commission cited to the SIP requirement, noting that a detailed five year build out plan should be sufficient to ensure that applicants intend to use USF support to further the goals of universal service.¹⁴

Accordingly, AT&T relied expressly on its SIP in supporting its 2006 Petition for designation as an ETC in twenty-one non-rural BellSouth wire centers and twenty-three rural study area codes (SACs) in the State of Georgia,¹⁵ including with respect to its argument that “designating [AT&T] as a competitive ETC will service the public interest.”¹⁶ Specifically, AT&T cited its SIP — and only its SIP — to support the claim that “universal service support will enable [AT&T] to *construct facilities* to improve quality of service and *extend telephone service* to individuals and business that currently have no choice of telephone service provider.”¹⁷ AT&T also cited its SIP in support of the claim that AT&T would use USF monies “to build a number of new cell sites and other infrastructure.”¹⁸

B. AT&T’s SIP Shows That AT&T’s Petition Is Not In The Public Interest [REDACTED]
[REDACTED]

¹³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report & Order, 20 FCC Rcd 6371, ¶23 (2005) (*ETC Designation Order*).

¹⁴ *Id.*

¹⁵ Petition of AT&T at 2.

¹⁶ *Id.* at 14.

¹⁷ *Id.* (emphasis added)

¹⁸ *Id.*

Perhaps AT&T did not expect any party to read its SIP,¹⁹ but a close examination shows

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁹ Cf. Opposition of Cingular, LLC, Embarq Corp.'s Motion for Protective Order, CC Docket 96-45 (Dec. 15, 2005).

²⁰ Exhibit A.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. AT&T's Planned Expenditures [REDACTED]

[REDACTED]

[REDACTED] Specifically, Section 254(e) provides that “[a] carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities for which support is intended.”²¹ Having constructed facilities *for which USF support was originally intended*, it clearly makes sense for some portion of universal service support to flow [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²¹ 47 U.S.C. § 254(e).

²² Exhibit A.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] AT&T's willingness to hide its plans out in plain sight indicates, if anything, its mistaken view of the ETC designation process as a *pro forma* exercise. In a recent Petition to Revoke Sprint-Nextel's ETC status in Virginia, a coalition of rural ILECs provided the Commission with the opportunity to warn all ETCs that they must live up to their promises.²³ Similarly, this proceeding provides the Commission with the opportunity to show ETCs that they must make the right promises to begin with, because the Commission is paying close attention.

II. THE COMMISSION SHOULD ADOPT PROTECTIVE ORDERS AT THE OUTSET OF ETC DESIGNATION PROCEEDINGS TO FACILITATE REVIEW AND COMMENT

TDS representatives were ultimately able to review the SIP and comment meaningfully on AT&T's petition. In order to avoid the additional process necessary to secure a protective order for this important information, however, the Commission should follow the example it has

²³ See Rural ILECs Petition for Revocation of Sprint Nextel's ETC Designation or, Alternatively, Motion to Show Cause, CC Docket No. 96-45 (June 4, 2007).

set in the contexts of Section 271 petitions and license transfer applications associated with mergers.²⁴ In these contexts, the Commission adopts protective orders at the outset of the proceeding and requires only that actual or potential adversaries file a request for the information and sign a confidentiality agreement. Such an approach would benefit the Commission and the public interest, and is consistent with the intent of the Administrative Procedure Act that parties be able to comment meaningfully on agency proceedings.²⁵

²⁴ E.g., *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer Of Control - Protective Order*, WC Docket 06-74, Order, 21 FCC Rcd 5215 WCB 2006); *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket 06-172, Protective Order, 21 FCC Rcd 10177 (WCB 2006); *Application of Qwest Communications International, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 For Authorization to Provide In-Region, InterLATA Services in Arizona*, WC Docket 03-194, Protective Order, 18 FCC Rcd 18257 (WCB 2003).

²⁵ *Cf. U.S. Lines, Inc. v. Fed. Maritime Comm'n.*, 584 F.2d 519, 534 (D.C. Cir. 1978) (“Information in agency files or reports identified by the agency as relevant to the proceeding [must] be disclosed to the parties for adversarial comment.”); *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 393 (D.C. Cir. 1973), *cert denied*, 417 U.S. 921 (1974) (“It is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that, [in a] critical degree, is known only to the agency.”).

III. CONCLUSION


The public interest is best served by directing universal service funds to uses that will lead to the deployment of advanced, high quality services to rural and other high cost customers, and to expanding coverage into underserved areas. As AT&T's SIP shows, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This does not serve the public interest, and Section 214 requires that AT&T's petition for designation as an ETC in Georgia be denied accordingly.

Respectfully submitted,



Gerard J. Waldron
M. Ryan Calo
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-6000

Counsel to TDS Telecommunications Corp.

EXHIBIT A

REDACTED FOR PUBLIC INSPECTION